

FILED
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION
2001 JAN 19 P 12:28

POLK AUDIO, INC.

Plaintiff

v.

SMILE PHOTO CORP., ET AL.

Defendants.

Case No.: WMN-00-CV-2761

PROPOSED ORDER

On December 27, 2000, Plaintiff Polk Audio, Inc. ("Polk Audio"), filed a motion for an order holding Defendants, Smile Photo Corp. ("Smile Photo") and Bob Englander, in contempt of this Court's Order For Injunctive Relief dated November 9, 2000 ("Order For Injunctive Relief"), in the following respects: (a) failure to provide the affidavit required by Paragraph 5(a) of the Order For Injunctive Relief; (b) failure to provide the documents required by Paragraph 5(b) of the Order For Injunctive Relief; and (c) in violation of Paragraph 1(b) of the Order For Injunctive Relief, advertising and promoting Polk Audio loudspeakers for sale on Defendant Smile Photo's website from at least December 7, 2000, up to the date that this Proposed Order was submitted to the Court.

The deadline for filing an opposition to Polk Audio's motion was January 10, 2001. That deadline has passed and Defendants have not opposed Polk Audio's motion. In fact, despite being properly served with the summons and complaint, Defendants have not entered an

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appearance in this litigation. An Order Of Default and an Order for Injunctive Relief were entered against Defendants on November 6 and November 9, 2000, respectively.

On January 18, 2001, Polk Audio's counsel filed an Affidavit detailing the reasonable costs, including disbursements and attorneys' fees, of investigating the contempt and making and prosecuting Polk Audio's motion. That Affidavit was accompanied by a certificate of service upon Defendants. Having reviewed Polk Audio's motion and supporting documentation, and the aforementioned Affidavit of counsel, the Court hereby ORDERS:

- (1) Defendants Smile Photo and Bob Englander are in contempt of this Court's Order For Injunctive Relief, in the following respects: (a) failure to provide the affidavit required by Paragraph 5(a) of the Order For Injunctive Relief; (b) failure to provide the documents required by Paragraph 5(b) of the Order For Injunctive Relief; and (c) in violation of Paragraph 1(b) of the Order For Injunctive Relief, advertising and promoting Polk Audio loudspeakers for sale on Defendant Smile Photo's website from at least December 7, 2000;
- (2) Pursuant to Paragraph 3 of this Court's Order For Injunctive Relief, Defendants Smile Photo and Bob Englander, jointly and severally, shall pay to Plaintiff Polk Audio the sum of \$4,995.86, constituting Polk Audio's reasonable total costs (including \$4,721.50 in attorneys fees and \$274.36 in related costs) of investigating the contempt and making and prosecuting Polk Audio's motion; and
- (3) Defendants Smile Photo and Bob Englander, jointly and severally, shall pay to Plaintiff Polk Audio \$250 dollars for each day, following the fifth day after issuance of this Order, on which Defendants shall (a) violate Paragraph 1(b) of the Order For Injunctive Relief by advertising and promoting Polk Audio loudspeakers for sale on

Defendant Smile Photo's website; (b) fail to deliver to Polk Audio the affidavit required by Paragraph 5(a) of the Order For Injunctive Relief; (c) fail to deliver to Polk Audio the documents required by Paragraph 5(b) of the Order For Injunctive Relief; or (d) otherwise violate any of the provisions of this Court's Order For Injunctive Relief.

IT IS SO ORDERED.



William M. Nickerson
United States District Judge

Dated: January 19, 2001.